IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5756 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

NAZAR MOHMED KALUMIYA SHAIKH - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

==========

Appearance :
MR BM MANGUKIYA for Petitioner(s) : 1,
MR DIPEN DESAI ASST GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 30/03/2006

ORAL JUDGMENT

1. This is a fresh matter got it circulated by the learned advocate appearing on behalf of the

petitioner for urgent orders. This matter is called out twice today, but the learned advocate appearing on behalf of the petitioner is absent on both the occasions. This Court waited for the learned advocate appearing on behalf of the petitioner so that he can argue the matter on merits. However, as the learned advocate appearing on behalf of the petitioner has remained absent though the matter was called out twice,this Court has no other alternative but to decide and dispose of the present special civil application on merits on the basis of the material available and pleadings in the petition.

2. By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order passed by the learned Addl. Chief Secretary (Appeals), Revenue Department, State of Gujarat dated 1.3.2006 passed in Revision Application No.43 of 2001 in

dismissing the same and confirming the order passed by the Collector, Sabarkantha dated 29.5.2001 in not extending the period of lease in favour of the petitioner with respect to the land admeasuring 7-43- 20 sq.mtrs of land bearing City Survey No.2697 paiki which has expired on 31.7.1988.

3. It appears from the record and pleadings that it is the case of the petitioner that he has been allotted small piece of land on yearly lease basis and the last renewal was vide order dated 11.1.1988 which was valid upto 31.7.1988. It is the case on behalf of the petitioner that thereafter no renewal order has been passed though it is the case of the petitioner that he went on making applications for renewal of the lease. It is required to be noted and so stated even in the petition that the petitioner is not having copies of the renewal applications. However, fact remains that on and after 31.7.1988

there is no valid lease in favour of the petitioner. It appears from the petition that after period of almost of 11 years of expiry of the lease period, the petitioner submitted an application dated 22.7.1997 for renewal of the said lease. It is also the case on behalf of the petitioner that another application was submitted by the petitioner for renewal of the said lease on 15.7.1988 and thereafter, various applications have been filed. It appears from the record that and according to the petitioner, the petitioner was running a shop in a small piece of land and wanted to extend his business and therefore, requested to allot further piece of land admeasuring approximately 12 meters. It appears from the record that vide impugned order dated 29.5.2001 the Collector, Sabarkantha rejected the said application on the ground that the land is forming part of the road and the same is adjacent to the office of the Taluka Panchayat. Being aggrieved and dissatisfied with the order passed

by the Collector, Sabarkantha dated 29.5.2001 the petitioner preferred the revision application before the Secretary (Appeals), Revenue Department, State of Gujarat under Section-211 of the Bombay Land Revenue Code being Revision Application No.43 of 2001. The said revision application came to be admitted and it is the case of the petitioner that after bi-parte hearing the learned Secretary (Appeals) vide order dated 9.11.2001 stayed / suspended the order passed by the Collector, Sabarkantha. It is the case on behalf of the petitioner that one third party – Rambhakat Mandal Trust which wanted to be joined as the party, submitted an application for being joined as the party respondent and even the said third party also submitted application on or about on 1.10.2001 for vacating the interim relief granted in favour of the petitioner and it is the case on behalf of the petitioner that the learned Secretary (Appeals) rejected the aforesaid applications for

joining party. At this stage, it is required to be noted that the petitioner has not produced any such order passed by the Secretary (Appeals), rejecting the application of the third party for joining party. It is the case on behalf of the petitioner that inspite of the above, the third party again submitted one application on 8.10.2005 and copy of which was never served upon him and on the basis of the said application the date of hearing was fixed as 8.12.2005 and on that day the petitioner did not remain present and the said proceeding has been decided exparte and the same has been decided on merits and by impugned judgment and order dated 1.3.2006 the learned Secretary (Appeals), Revenue Department, State of Gujarat has dismissed the said revision application confirming the order passed by the Collector, Sabarkantha dated 29.5.2001. Being aggrieved and dissatisfied with the same, the petitioner has preferred the present special civil application under Articles 226 and 227 of

the Constitution of India.

4. It appears from the pleadings that the main contention of the petitioner is that the revisional authority has considered the application submitted by the third party dated 8.10.2005, and a copy thereof, has never been given to the petitioner and therefore, the impugned order is in breach of principle of natural justice. It also appears from the pleadings that it is also the contention of the petitioner that when the petitioner is in possession of the land in question since about more than 13 years, the respondent could not have exercised the powers under the provisions of the Bombay Land Revenue Code and could not have ordered eviction of the petitioner from land in question. It is also pleaded in the pleadings that there is valid contract of lessee and lessor and as held by this Court in case of RAGHAV NATHA AND OTHERS V. G.F.MANKODI AND OTHERS, 1965 GLR 34

and it is also held by the Hon'ble Bombay High Court in case of SAMBHAJI BALAJI V. THE MAMLATDAR OF BARAMATI, 1955 Bombay Law Reporter 281 that once there is contractual relation between the State and the subject, the same are not revisable under the provisions of the Bombay Land Revenue Code.

5. I have gone through the order passed by the revisional authority which is impugned in the present special civil application. It appears from the record that the petitioner was granted land admeasuring 7-43-20 sq.mtrs of the land City Survey No.2695 paiki on lease in the year 1967 and the lease has been extended until 31.7.1988 and thereafter, there is no valid lease in favour of the petitioner. It appears that the petitioner is having cabin on the street land and as he has encroached upon the some other land adjacent thereto i.e. admeasuring 11-88-40 sq.mtrs, the petitioner applied for renewal of lease of the

original allotment as well as applied for additional land admeasuring 11-88-40 sq.mtrs and considering the fact that the land in question is on road and is on public street and just outside the garden and Taluka Panchayat Office, the same is hindrance to the traffic / road and therefore, the Collector, Sabarkantha by order dated 29.5.2001 rejected the application submitted by the petitioner for renewal of the lease and also for allotment of the additional land. Against the said order, the petitioner preferred the revision application before the State Government which came to be dismissed by the impugned judgment and order. It appears from the record that that some third party submitted an application which according to the petitioner came to be rejected (copy thereof is not annexed to the petition). However, it appears from the record and impugned order that the said third party submitted another application for early hearing and the revisional authority has fixed the date of final hearing as

8.12.2005. The petitioner was served with the notice for hearing on 8.12.2005. However, though the petitioner was served with the said notice, the petitioner did not remain present before the revisional authority and the matter proceeded exparte. From the impugned order it appears that the said third party whose application for joining party is alleged to have been dismissed and the same is not heard at all and it appears that only on the basis of some application, revision application was fixed on 8.12.2005 and the said date of hearing was served upon the petitioner. Under the circumstances, non supply of the application dated 8.10.2005 will not vitiate the entire order and it cannot be said that the impugned judgment and order is in breach of principle of natural justice. The impugned judgment and order is not based upon the application dated 8.10.2005 and even otherwise, the revisional authority has not heard the third party. There is no right in favour of the

petitioner to pray for renewal of the lease. On sufficient ground renewal of lease can be refused also. In the present case as it has been found that the land upon which the cabin of the petitioner is situated is of public road and is part of the public street and it is just outside the garden and gate of the office of the Taluka Panchayat and the same is coming in the way of the road and considering the above, when renewal of the lease is refused, it cannot be said that there is any illegality committed by both the authorities below. The judgments relied upon by the petitioner referred to above, are not helpful and of any assistance to the case of the petitioner inasmuch as the contract has not been revised by the competent authority exercising the powers under the Bombay Land Revenue Code. In the present case, the application submitted by the petitioner for renewal of lease is rejected and therefore, the cited decisions relied upon in the petition, are not of any assistance to the case

of the petitioner.

6. Under the circumstances, there is no substance in the present petition and the same requires to be dismissed and is accordingly dismissed in limine.

[M.R.Shah, J.]

=kailash=